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Diane Sugimura, Director, and
Miles Mayhew, Staff
Department of Planning & Development
City of Seattle

Dear Ms. Sugimura and Mr. Mayhew:

The Heron Habitat Helpers for Kiwanis Ravine (HHH) thank you for this opportunity to comment on Seattle's ECA Draft Proposed Code and for the 1-week extension you have provided. Overall, you are to be congratulated on many significant improvements over the old 90's version. Our comments are focused on ways to strengthen it further, particularly related to heron management.

HHH is the official adopt-a-park steward for Kiwanis Ravine. Its purpose is to help Seattle enjoy, learn about, and protect its largest nesting colony of great blue herons in Kiwanis Ravine. In that regard, we are particularly excited about proposals to establish a Kiwanis Ravine Heron Management Area.

Best wishes,

Donna Kostka
With Mike Marsh, for HHH

HHH Comments on Draft ECA Proposed Code

Reviewed from heron management point-of-view,

By Donna Kostka/Mike Marsh, representing Heron Habitat Helpers (HHH) for Kiwanis Ravine – however, our opinions do not necessarily reflect all HHHers.

GENERAL COMMENTS

1. Regulations on marine shoreline and nearshore buffers should not be put off several years. If DPD cannot manage the workload currently, it should at minimum move up the due date and seek means to speed up the process by hiring additional personnel through grants, enlisting non-profit environmental groups or universities to assist as a working group, etc. Incentives should be sought to begin restoration, such as waiving the cost of the permit or allowing every “X” shoreline owners to pool their restoration efforts. Seattle’s herons at Kiwanis Ravine particularly need additional eelgrass beds for foraging. HHH would give priority to restoration of these beds, for example, offshore of Discovery Park, where they once were located and so close to 2 of the 3 proposed Heron Management Areas (Kiwanis Ravine and Golden Gardens). We expect it would be impossible to bring shoreline and nearshore buffers into compliance immediately, therefore, a graduated implementation schedule may be necessary.

2. HHH understands the proposed Heron Management Areas provide heron protection from construction during nesting and retaining trees above a specified dbh on private property within 500 feet of habitat areas (see DPD map). Other City Departments are urged to follow these same provisions. At first glance one would think this wide swatch would cover any development proposals related to wetlands, riparian, steep slope, and landslide prone zones. However, HHH urges DPD to crosswalk “what would happen if” changes were proposed during non-nesting season that would affect the Kiwanis wetlands, riparian, steep slope, and landslide prone zones. Would the heron habitat still be protected? Many of our specific comments below address those cross-relationships.

3. Wetlands and creeks will be typed according to State categories. Kiwanis Ravine’s Wolfe Creek is highly modified by (1) putting it into a culvert and conveying the clean water to the West Point Treatment Plant, (2) a 40’ drop at the culvert drop point, which prevents fish from going upstream, and (3) significant amounts of fill put on the edges (some endorsed and undertaken by the City) which have added much sediment to the ravine and its wetlands and its creek. Therefore, Wolfe Creek currently is a perennial stream with 11 separate wetlands totaling 1.27 A. and no known fish. Five of the wetlands are perched on ravine slopes but flow down into the creek, and the remainder are on the edges of the creek or are flow-through areas depending on constriction points caused by woody debris, etc. The one-size-fits-all State wetland and creek categories fail to reflect the value of this uniquely productive complex -- truly an exception to State categories. None of the wetland or creek sections are isolated. They flow together and work as a hydrological system. During rains, we personally have observed even the mountain beaver tunnels along the slopes acting to carry groundwater toward the ravine’s water retention areas and its free flowing sections. In addition, Kiwanis Ravine has

unique wildlife habitat value as it hosts Seattle's largest nesting colony of great blue herons and many other species. Please add a section to the proposed regs that reflects the value of Kiwanis Ravine as an exception outside the State categories with wider buffering, averaging, etc.

4. Proposals to save all trees above 22" dbh in the proposed Heron Management Areas sound wonderful, but they do not reflect reality. DPD and other City departments must give property owners access to their property, even if that means giving them a tree-cutting-permit in street and alley right-of-ways OR buying that property from the owners (which the City cannot afford). Kiwanis Ravine ownership is a checkerboard pattern, as it is criss-crossed with many, many street and alley right-of-ways. In fact, about 2 years ago, HHH – even after a huge political campaign – was unable to save a Western Red Cedar over 85 years old that stood in an alley, a huge tree that just missed the “exceptional” tree category – but it blocked access to a development. Its sections now lie in the ravine as “woody debris.” The City argued that the tree grew naturally and was not planted; therefore, it could not save it. HHH was never told where in the regs that was written! For the past several years, Seattle Parks has been working with SDOT to obtain the “surface jurisdiction” of the Kiwanis related rights-of-way. HHH has been told these negotiations will be coming to fruition before long. Additions to the ECA code must be written to reflect “no tree cutting on street/alley rights-of-way on land for which Parks has taken over the surface jurisdiction for wildlife habitat purposes.” Then, Park regs should reflect a process by which controversies can be worked out regarding an owner's need for access.

5. Only the “big five” creeks have been typed in Seattle – with the remainder of the work planned for this summer. Yet, these ECA regulations propose blanket provisions affecting streams by types – and citizens do not know what type “their creek” is. The cart is before the horse. For example, Wolfe Creek in Kiwanis Ravine could qualify as a Type 3 perennial stream that could support fish (if it had not been put in a culvert with a 40' drop)! Type 4 and 5 streams are intermittent – clearly Wolfe Creek does not meet that definition. Again, as pointed out in “4” above, an exception must be made in State categories to reflect outstanding hydrologic systems that are highly modified. And buffers should be broadened to reflect the wildlife value of Wolfe Creek to the Heron Management Area, even during non-nesting season. Also, the proposed regs do not make clear what daylighting provisions apply to Wolfe Creek – and it is the long held dream of HHH to daylight the mouth of Wolfe Creek and restore its natural stream mouth into Salmon Bay through the sea wall at Commodore Park. We doubt the Wolfe Creek watershed is 52 acres, however this may not include land in Discovery Park that currently is piped away from the watershed. There should be an exception to the 52 acre figure for the daylighting of Wolfe Creek because of (1) the extent of its modification and (2) the value of restoration to migrating salmon just below the Locks.

6. Measurements are provided for what constitutes a steep slope. The definition of a steep slope should include how to consider the slope when it has been modified. In the Kiwanis Ravine neighborhood, there are tons of fill across the original ravine at the address 3150 W. Government Way. Across the back of that property on the fill, an alley

has been cut but is now grown over with blackberries, etc. The steep slope should be measured to the top of the slope – above the cut, not to the lower edge of the cut.

7. HHH is impressed with the draft Heron Management Plan that was made public at the public meeting and its 2-pages provided by DPD staff for HHH review. Its related map is very generous in interpreting the needs of the great blue heron. However, the text of the ECA Draft Proposed Code does not provide a direct link to this plan. Page 60 of the strike-out version introduces “species of local importance” provisions, ending with section E4 on page 61 which states the Director may establish a management plan by rule. Nothing is stated about the draft bald eagle or heron management area plans which already are in existence! We have provided language on Page 61, line 20 in an attempt to rectify this.

8. Seattle citizens feel it is only fair to be notified when changes are proposed to landslide prone/steep slope areas on their neighbors’ property. However, if this is too big and expensive an administrative job for SPD, then the party proposing the change should be required to post a sign.

9. DR&R, p. 7 – Where is Rainier Sicks Stadium? A typo?

10. DR&R, p.10 – Buffer averaging is hard to understand. Take another look at clarifying this and provide for wider buffers..

COMMENTS SPECIFIC TO ECA PROPOSED CODE STRIKE-OUT VERSION:

Note, new proposed language is bolded.

Page 2, lines 8-10. Text is written to give weight to development over environment. It states – “to promote...development that avoids adverse....” We propose that language be changed to: **“This chapter is intended to allow urban development within the environmental safeguards necessary to preserve the City’s natural systems balanced by fairness to property owners.”** The introduction to this section should mirror the precautionary principle of state law that purports no net loss of environmental function and encourages the City’s Comprehensive Plan principles of conserving and restoring the city’s native forest cover and open spaces.

Page 6, lines 1-5. Sections 5 & 6 do not reflect modifications in steep slopes that have been made by fill or by making SDOT alley or street cuts across that fill. Section 5 should be changed on line 3 to: “...or nonengineered cut and fill operations **or engineered street/alley rights-of-ways on unstable fill soil.**” Section 6 should be changed on line 5 to: “...stream bank erosion or fill. **In such cases where street or alley right of ways have been cut in unstable fill, the “top” of the steep slope should be considered the edge above the right of way cut.**” See general comment “6.”

Page 7, line 20+. A third option should be included: **“...or (3) smaller in size but part of a unique wetland/creek system that is part of a Heron Management Area, Eagle Management Area, or area set-aside for other species of local importance.”**

Page 9, lines 15-19. Riparian full channel widths vary by time of the year. So, on line 16 this should be inserted: "...full channel width greater than 2 feet (2') **during peak flow during the wet season,...**"

Page 11, lines 4-5. Change to "The Director **shall** update or amend the maps by Director's Rule **as new information becomes available.**"

Page 17, lines 5-10. Please make any corrections linked to our general comments "3-5" above.

Page 24, lines 11-18. Please check to determine if the proposed Heron Management Plan requirement of saving trees 22" dbh or bigger and the no-construction nesting dates should be cross-referenced here.

Page 26, lines 19-21. The reference for the 100 year seismic and 100 year flood event should be cited, unless there is an overall reference that is made obvious in the code.

Page 32, lines 15-19. As on page 16, lines 19-21, a reference should be cited unless it is obvious or in the cited Ordinance. Even though we know there are references, other readers not seeing a reference would wonder if there is one.

Page 33, lines 4-6. A cross-reference on the 2 feet should be added for the related reference in Best Management Practices. We do not have a copy of the BMP.

Page 36, lines 20-21. Delete the words "whenever possible." Or make a prohibition absolute in wildlife ECA's, including heron management areas.

Page 38, lines 1-13. Please refer to general comment "3" above. This one-size-fits all system of 4 categories does not make room for an exception such as the Kiwanis Ravine/Wolfe Creek/Related Wetlands location. Provision must be made for unique hydrologic systems to be accommodated and protected by the code.

Page 39, lines 14-15. We have a problem with including the word "immediately." We have seen instances in which plants were set in the ground during the dry season and not watered – therefore, they were lost. The language should be changed to **delete the word "immediately"** and add to the end of the sentence: **"...during the next wet season."**

Page 40, lines 7-16. These wetland buffer minimum widths are not related to wildlife ECAs or heron management areas or eagle management areas, etc. The text says "a high level of function for habitat shall be determined as set in C1, which we commented on in our general comment "3" and in the Page 38, lines 1-13 specific comment above. These buffers are very important to protect the great blue herons because during non-nesting season, interpretation of the code could fall back to these individual ECA requirements i.e. wetlands, riparian, etc.

Page 44, lines 9-22 and Page 45, lines 1-19. These restoration/enhancement ratios need a reference to how they would be applied in a heron management area.

Page 47, line 23. Another consideration should be added: **“d. Where an alley or street right of way has been cut into a steep slope consisting of fill, the steep slope should be measured to the top of the slope – not to the lower edge of the cut.”** See general comment “6” above.

Page 48, line 19. Add: **“...native vegetation planted during the next rainy season.”**

Page 52, line 12, Section A continuing... We could find no reference for cross-referencing wildlife ECAs or great blue heron management areas, etc. This should be built in to this section, as it may be important during non-nesting season for the herons.

Page 59, lines 14-15. In this section, the word “may” should be changed to **“shall”** and an addition should be added to the end of the sentence: **“...the shoreline and its near shore area.”** This could result in more eelgrass being planted for heron foraging.

Page 60, line 12. Add a number 5 to the list: **“5. Preservation of original terrain.”**

Page 61, line 20. Add a new sentence: **“This provision applies to existing draft management area plans for the great blue heron and bald eagle, as well as to new management area plans.”** The 2-page draft heron management area plan supplied for our review by DPD staff, should be grandfathered in. This is the only place in the whole ECA proposed code where enabling legislation sets in motion approvals and links for already existing draft plans! See general comment “7”.

Page 63, line 11. Add a C to the list: **“...or (c) all considerations related to fish and wildlife ECAs and Heron Management Areas are provided.”** An interesting fact is that a bridge across Kiwanis Ravine was once on Seattle’s list – never got built, thankfully!

Page 69, line 15. Add to the end of the line: **“...b or c, “including where alleys or street right of ways have been cut in a steep slope , the steep slope should be measured to the top of the slope not to the bottom edge of the cut.”** See general comment “6” above.

Page 69, line 16 Add a “d” to the list: **“...d. No development shall intrude upon requirements of a heron management area.”** If section C on page 73, line 8-11, is protective enough, perhaps this addition would be unnecessary.

Page 78, line 15. Add to this sentence: **“...wetlands, wetland buffers, fish and wildlife ECAs, heron management areas and eagle management areas.”**

Page 81, line 15. Add to this sentence: **“...areas or their buffers, or fish and wildlife ECAs or management areas for individual species.”**

Page 82, line 22. Add to this sentence: “...pertinent site information, **including fish and wildlife ECAs or management areas for individual species.**”